STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1502

State of Minnesota,
Respondent,

vs.

Floyd Joseph Moen,
Appellant.

Filed December 13, 2021
Affirmed
Johnson, Judge

Scott County District Court
File No. 70-CR-16-23187

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Floyd Joseph Moen was found guilty of two controlled-substance crimes based on evidence that he possessed nearly a pound of methamphetamine. Law-enforcement officers found the drugs when they executed a warrant that authorized the search of Moen's

hotel room. Moen argues that the district court erred by denying his motion to suppress evidence on the ground that the warrant authorized only a daytime search but officers executed it during the nighttime. We conclude that suppression is not required because the nighttime search was a mere technical violation of the statute governing nighttime searches, not a serious violation that would require suppression. Therefore, we affirm.

FACTS

On December 19, 2016, at approximately 2:00 p.m., Agent Santos of the Shakopee Police Department received a tip from a law-enforcement officer in another county that Moen was traveling to Shakopee, was staying at a particular hotel with his girlfriend, and was in possession of as much as a pound of methamphetamine. Agent Santos visited the hotel and spoke with hotel staff, who verified that Moen was registered to room 111 and was due to check out at 11:00 a.m. the following day. Agent Santos confirmed that Moen's car, a black Dodge Charger, was in the hotel parking lot. Agent Santos and other officers monitored room 111 from the parking lot beginning at approximately 5:30 p.m. At approximately 6:40 p.m., officers stopped Moen's car near the hotel. The officers identified the occupants as Moen and his girlfriend and released them. Shortly thereafter, Agent Santos ordered a canine sniff of the door to room 111. A police dog trained in detecting narcotics had a positive reaction.

At approximately 7:00 p.m., Agent Santos began preparing an application for a warrant to search Moen's hotel room. Meanwhile, another officer, Sergeant Arras, monitored the door to the room. When a man matching Moen's description walked through the hallway toward room 111, Sergeant Arras asked him whether his name was Floyd.

After Moen said yes, Sergeant Arras told him that he could not enter the hotel room because officers were preparing an application for a search warrant. Moen said that he would wait outside in his car. Moen returned to his car and drove away.

Agent Santos used a template to prepare the application for a search warrant and a proposed warrant. In the application, Agent Santos requested a nighttime warrant due to Moen's anticipated departure the following morning and to prevent the "loss, destruction, or removal of the objects of the search and to protect the safety of the peace officer(s)." But in the proposed warrant itself, Agent Santos inadvertently included language that limited execution of the warrant to daytime hours, specifically, 7:00 a.m. to 8:00 p.m.

Agent Santos submitted the warrant application and proposed warrant to a district court judge via e-mail. At some time after 8:00 p.m., Agent Santos spoke with the judge by telephone and swore to the truth and accuracy of the application. The district court judge later signed the warrant that Agent Santos had prepared and, at 9:06 p.m., sent it to him via e-mail. Agent Santos printed a copy of the warrant but did not read it.

At approximately 9:15 p.m., Agent Santos and other officers entered room 111 using a keycard supplied by hotel staff. Before entering, Agent Santos knocked on the door and shouted, "Police! Search Warrant! Come to the door!" No one answered within 30 seconds. After entering the hotel room, officers confirmed that no one was inside. Officers proceeded to search the room. They found and seized multiple items, including approximately 431 grams of methamphetamine.

Three days later, the state charged Moen with two counts of first-degree controlled substance crime, in violation of Minn. Stat. § 152.021, subds. 1(1), 2(a)(1) (2016). In

October 2017, Moen moved to suppress the evidence that was seized during the execution of the search warrant. In September 2018, the district court conducted a contested omnibus hearing at which the state called two witnesses, Agent Santos and Sergeant Arras. In a post-hearing memorandum, Moen argued that the officers violated a state statute governing nighttime searches and that suppression was required on the ground that the officers did not know whether anyone was present in Moen's hotel room before they entered the room and executed the search warrant. In October 2018, the district court filed an order in which it denied Moen's motion. The district court reasoned that the officers committed a mere technical violation of the state statute by executing a daytime warrant at nighttime and that suppression of the evidence was not required by either the statute or the Fourth Amendment.

In May 2019, the parties agreed to a stipulated-evidence court trial. *See* Minn. R. Crim. P. 26.01, subd. 4. In June 2019, the district court filed an order in which it found Moen guilty of both charges. In August 2020, the district court imposed a sentence of 66 months of imprisonment but stayed execution of the sentence and placed Moen on probation for ten years. Moen appeals.

DECISION

Moen argues that the district court erred by denying his motion to suppress evidence.

A.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. In general, a warrantless search of a home is unreasonable, unless it is justified by exigent circumstances or consent. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The term "houses" includes a hotel room. *Stoner v. California*, 376 U.S. 483, 490 (1964). However, "[r]elatively little attention has been given to . . . whether there are special limitations upon nighttime searches flowing from the Fourth Amendment." Wayne R. LaFave, 2 *Search & Seizure* § 4.7(b), at 817-18 (6th ed. 2020). The United States Supreme Court has suggested that a nighttime execution of a search warrant could be constitutionally unreasonable. *See, e.g.*, *Coolidge v. New Hampshire*, 403 U.S. 443, 477 (1971); *Jones v. United States*, 357 U.S. 493, 497-98 (1958).[1]

B.

In Minnesota, the execution of search warrants at nighttime is governed by the following statute:

> A search warrant may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless the court determines on the basis of facts stated in the affidavits that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search or to protect the searchers or the public. The search warrant shall state that it may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless a nighttime search outside those hours is authorized.

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[1] In federal prosecutions, the issue is governed primarily by a statute and a rule of court. *See* 21 U.S.C. § 879 (2018); Fed. R. Crim. P. 41(e)(2)(A)(ii). The federal rule requires warrants to be executed between 6:00 a.m. and 10:00 p.m. "unless the judge for good cause expressly authorizes execution at another time." Fed. R. Crim. P. 41(a)(2)(B), (e)(2)(A)(ii).

Minn. Stat. § 626.14 (2020). To obtain a warrant authorizing a nighttime search, "the application for the warrant must establish at least a reasonable suspicion that a nighttime search is necessary to preserve evidence or to protect officer or public safety." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

If law-enforcement officers execute a daytime-only search warrant at nighttime in violation of section 626.14, the consequences depend on the nature of the violation. If an unauthorized nighttime search "is a serious violation that subverts the basic purpose of section 626.14," then "evidence seized during the search should be suppressed." *State v. Jackson*, 742 N.W.2d 163, 168-69 (Minn. 2007). "[B]ut if the violation is merely technical in nature, then suppression is not required." *Id.* at 169. To determine whether a violation is "a serious violation that subverts the basic purpose of section 626.14," *id.* at 168-69, a court must consider the "historic aversion to nighttime searches" and the "core purpose" of the statute, *id.* at 170. The core purpose of the statute is "to protect against, at a minimum, the indignity of being roused out of bed in the middle of the night and made to stand by in nightclothes" and to protect the interest in "freedom from intrusion during *a period of nighttime repose*." *Id.* at 170-71.

The supreme court has illustrated these principles in three opinions. In *State v. Lien*, 265 N.W.2d 833 (Minn. 1978),[2] law-enforcement officers executed a search warrant at an

[2] The supreme court has noted, in the context of a discussion of a good-faith exception to the exclusionary rule, that *Lien* has been "overruled on other grounds" by *Richards v. Wisconsin*, 520 U.S. 385 (1997). *See State v. Lindquist*, 869 N.W.2d 863, 870 (Minn. 2015). In *Richards*, the United States Supreme Court held that law-enforcement officers may execute a search warrant of a home on a "no-knock" basis only if they "have

apartment shortly after 9:00 p.m. in late September. *Id.* at 835-36. The officers had observed the apartment beforehand while waiting for Lien to return home. *Id.* at 836. In doing so, the officers had observed several other persons going to and coming from the apartment. *Id.* When the officers approached the apartment, the door was slightly open. *Id.* The supreme court stated that the search warrant "was executed at a reasonable hour when most people are still awake." *Id.* at 841. Furthermore, the officers "knew that defendant had just returned home, he was fully clothed, there was considerable activity in his apartment, and, in fact, defendant's door was partly open." *Id.* The officers' knowledge of activity inside the apartment assured them that a search would not be "the kind of nighttime intrusion—with people being roused out of bed and forced to stand by in their night clothes while the police conduct the search—that our statutory rule against nighttime execution of search warrants is primarily designed to prevent." *Id.* The supreme court concluded that the officers committed a mere "technical violation" of section 626.14 and that suppression was not required. *Id.*[3]

In contrast, in *Jackson*, law-enforcement officers executed a search warrant at a home at 9:25 p.m. in mid-December, "when it would have been dark for several hours."

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a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." 520 U.S. at 394. Although *Lien* no longer may be relied on to support a no-knock warrant, it remains good law with respect to the question whether a nighttime execution of a daytime-only search warrant in violation of section 626.14 requires suppression.

[3] We acknowledge that the *Lien* court referred to both constitutional and statutory principles in applying section 626.14. *See* 265 N.W.2d at 840-41. But the supreme court later clarified that *Lien* "was decided on statutory rather than constitutional grounds." *Lindquist*, 869 N.W.2d at 871.

Id. at 172. The officers had an invalid nighttime warrant because they had not provided the district court with sufficient information to justify a nighttime search. *Id.* at 167-68. When the officers entered the home, they apparently had no information about whether anyone was present inside the home or, if so, whether they had "yet entered the period of nighttime repose that section 626.14 protects." *Id.* at 173. The court concluded that the officers committed a serious violation of section 626.14 and that suppression was required. *Id.* at 174.

Similarly, in *State v. Jordan*, 742 N.W.2d 149 (Minn. 2007), law-enforcement officers executed a search warrant at a home at 6:00 a.m., again in mid-December, "during the period defined by statute as being nighttime." *Id.* at 151, 153. As in *Jackson*, the officers had an invalid nighttime warrant because they had not provided the district court with sufficient information to justify a nighttime search. *Id.* at 153. The officers believed that Jordan was present but had no information about whether he had yet entered the period of nighttime repose or whether any other persons were present. *Id.* at 153-54. The supreme court again concluded that the officers committed a serious violation of section 626.14 and that suppression was required. *Id.* at 154. The supreme court further concluded that, even though Jordan was not at home at the time of the search, suppression was warranted to protect "an absent homeowner's interest in safeguarding his family and social guests against unauthorized nighttime police intrusions." *Id.*

C.

In this case, the district court reasoned that the facts of this case are more like *Lien* than *Jackson* or *Jordan* and that the officers committed a mere technical violation of the statute such that suppression of the evidence was not required.

In arguing for reversal, Moen contends that this case is more like *Jackson* and *Jordan* in that the officers did not know that no one was inside the hotel room. In response, the state contends that the officers *did* know Moen and his girlfriend were not in the hotel room and also knew that no one else had been permitted to enter the hotel room for more than two hours. The state contends that the officers' knowledge allowed them to conclude that no one had entered into a period of nighttime repose in the hotel room. The state also contends that the facts of this case are more similar to those of *Lien*, in which the supreme court concluded the statutory violation was merely technical.

We apply a *de novo* standard of review to the district court's ruling. *Jordan*, 742 N.W.2d at 152. We begin by noting that the officers executed the search warrant outside the time period specified in both the statute and the warrant. Specifically, the officers executed the search warrant after 9:00 p.m. in mid-December, as was true in *Jackson*. *See*, 742 N.W.2d at 166. Also, as in both *Jackson* and *Jordan*, the officers did not have a warrant with valid authorization for a nighttime search. *See id.* at 168; *Jordan*, 742 N.W.2d at 153. Given those facts, it is undisputed that the officers violated section 626.14. The only question is whether the violation is serious or technical. *See Jackson*, 742 N.W.2d at 168-69. To answer that question, "the critical inquiry is what the officers kn[e]w at the time of entry." *See Jordan*, 742 N.W.2d at 154.

The evidence shows that, when the officers executed the search warrant, they knew that neither Moen nor his girlfriend was inside the hotel room. Sergeant Arras had spoken with Moen in the hallway at approximately 7:00 p.m., and Moen drove away from the hotel in his car shortly thereafter. An officer had previously identified Moen's girlfriend when Moen's car was stopped at approximately 6:40 p.m., and there was no indication that she had entered the room since then. An officer had stood outside the door to the hotel room continuously after 7:00 p.m. for the purpose of preventing anyone from entering.

The evidence also shows that the officers believed, with good reason, that no other person was inside the room. The hotel room was registered only to Moen. Agent Santos had been told that Moen would be accompanied by only one other person, his girlfriend. The officers had no information that any other person would be traveling with Moen or staying in the hotel room. Officers had monitored the hotel room from the parking lot for approximately three and one-half hours and, throughout that time, had not detected any activity in the room. Again, an officer had stood outside the door to the room since at least 7:00 p.m. to prevent anyone from entering. Furthermore, the officers did not enter the hotel room until they announced themselves and gave anyone who might be present an opportunity to speak up and thereby avoid an intrusion on nighttime repose.

Thus, the evidence shows that the officers ensured that the search would not be "the kind of nighttime intrusion—with people being roused out of bed and forced to stand by in their night clothes while the police conduct the search" that would violate the core purpose of section 626.14. *See Lien*, 265 N.W.2d at 841. In this way, the facts of this case are unlike those of *Jackson* and *Jordan*, where the officers had no information that would have

allowed them to believe that a search would not intrude on nighttime repose. *See Jackson*, 742 N.W.2d at 173; *Jordan*, 742 N.W.2d at 154. Rather, the facts of this case are like *Lien*, where the officers had good reason to believe that a search would not intrude on nighttime repose. *See Lien*, 265 N.W.2d at 841.

Thus, the district court did not err by concluding that the officers' violation of section 626.14 was merely a technical violation that did not require suppression of evidence.

D.

The district court considered not only the statutory issue discussed above but also whether the nighttime search was a violation of the Fourth Amendment to the United States Constitution. The district court concluded that the search did not violate the Fourth Amendment. Moen's appellate brief is focused on the statutory issue; it does not analyze any constitutional principles. Yet in the last sentence of the brief, Moen states that the nighttime search was both a statutory violation and a constitutional violation. Given the absence of any analysis as to whether the nighttime search was a constitutional violation, it appears that Moen did not intend to make a constitutional argument on appeal. If we were to construe the brief as raising a constitutional issue, we would conclude that the issue is inadequately briefed. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017), *rev. denied* (Minn. June 20, 2017).

In any event, even if Moen had made a constitutional argument, it would fail for the same reasons that his statutory argument has failed. That is so because the supreme court

has reasoned, in essence, that the constitutional standard is the same as the statutory standard. In *Jackson*, the supreme court stated that the constitutional standard is reasonableness and that the timing of a nighttime search is "a factor to be considered in determining whether a search is reasonable under the Fourth Amendment." 742 N.W.2d at 175-77. But the supreme court ultimately concluded that the nighttime search in *Jackson* was a violation of the Fourth Amendment for the same reasons that led the court to find a violation of section 626.14. *See id.* at 177; *see also Jordan*, 742 N.W.2d at 154-55. Thus, if asked, we would conclude that, for the same reasons that are stated above in part C, the district court did not err by concluding that the officers' nighttime search was not a violation of the Fourth Amendment.

In sum, the district court did not err by denying Moen's motion to suppress evidence.

Affirmed.